

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Eric C. Anderson et al.

Examiner: Yogesh K. Aggarwal

Serial No. 09/213,131

Art Unit: 2622

Filed: 12/15/1998

Attorney Docket No. 1104-069/P126C

For: METHOD AND APPARATUS FOR CORRECTING ASPECT RATIO IN A CAMERA  
GRAPHICAL USER INTERFACE

**THIRD SUPPLEMENTAL LETTER IN SUPPORT OF  
A PETITION UNDER 37 § 1.182 TO EXPUNGE CONFIDENTIAL MATERIAL**

Mail Stop: Office of Legal Administration  
Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Honorable Commissioner:

This is a third supplemental letter in support of a recently filed petition under §1.182 to replace Patent Owner's "original" Information Disclosure Statement ("IDS") in the above-identified matter. The original IDS inadvertently included documents that were designated as Confidential Business Information ("CBI") pursuant to the Protective Order in International Trade Commission ("ITC") Investigation No. 337-TA-726 ("726 Investigation").

Some of the materials that were originally designated as CBI under the 726 Investigation Protective Order and were inadvertently included in the original IDS have been recently "de-designated" by the parties who produced the materials. As such, a number of the documents at issue are no longer CBI and are no longer subject to the 726 Investigation Protective Order. The purpose of this supplemental letter is to identify those documents so as to narrow the universe of materials that need to be expunged from the PTO's records.

The remaining materials previously identified as CBI under the 726 Investigation Protective Order that were inadvertently included with the original IDS are still subject to the 726 Investigation Protective Order and Patent Owner respectfully requests that these remaining materials be expunged from the Patent Office records.

I. 10 RELATED CASES (SIMILAR ISSUES)

The above-mentioned matter corresponds to one of the following 10 reexaminations, applications and patents: 95/001,431; 95/001,420; 95/001,433; 90/010,834; 90/012,200; 90/012,090; 11/963,018; 09/213,131; 11/466,629; and 11/512,575.

II. BACKGROUND

For the convenience of the Patent Office, a summary of recent submissions is provided below. As a preliminary matter, Attorney Pinchus Lauffer of the USPTO Office of Patent Legal Administration has verbally stated that the non-patent literature associated with the above-identified cases (including all inadvertently included CBI) is currently flagged so that it is not available to the public, pending the outcome of these petitions.

- A. Patent Owner filed a Petition Under §1.182 to Replace the Original IDS (so as to expunge the inadvertently included CBI from the PTO's records).
- B. Patent Owner filed a corresponding Petition to Expedite.
- B. HTC filed a "Statement in Support" of the above petitions on September 19, 2012.
- C. Patent Owner filed a "First Supplemental Letter" clarifying that at least one document inadvertently included in the IDS and designated as CBI had been designated as confidential by Patent Owner.
- D. Patent Owner filed a "Second Supplemental Letter" specifically identifying a document that had been produced by HTC and designated by HTC as CBI under the 726 Investigation Protective Order and requesting that this specific document be expunged from the IDS and the PTO's records on an expedited basis.
- E. On September 6, 2012, Patent Owner requested information from the Office of General Counsel regarding any requests for certified prosecution histories of the 10 related cases. Such a request is the only way that a member of the public would be able to access non-patent literature associated with any of the impacted cases, including any of the documents that were designated as CBI and inadvertently included in the original IDS. On October 4, 2012, the Office of the General Counsel replied, indicating that 7 of the 10 related cases had each received one request, and that the remaining 3 cases had received no requests. See Exhibit A.

Patent Owner submits the present letter to document which materials originally designated as CBI under the 726 Investigation Protective Order and inadvertently included in the original IDS have been de-designated as CBI (or, to put it another way, have been designated as non-confidential).

### III. IDENTIFICATION OF MATERIALS ORIGINALLY DESIGNATED AS CBI AND MATERIALS THAT HAVE SINCE BEEN DE-DESIGNATED CBI

Exhibit B is a list of all references that were originally designated as CBI, and therefore were originally subject to the 726 Investigation Protective Order.

The materials on that list that have since been de-designated as CBI (and can now be publicly disclosed) are highlighted in green and are no longer subject to the 726 Investigation Protective Order.

The materials that are not highlighted are still designated as CBI, remain subject to the 726 Investigation Protective Order, and should be expunged from the PTO records.

### IV. RETENTION OF SOME EXPUNGED REFERENCES

Patent Owner agrees to store copies of all expunged documents that were designated as CBI by Patent Owner for the lifetime of the related patents.

The 726 Investigation Protective Order requires that, upon final termination of the 726 Investigation, all parties subject to the order destroy or return to the suppliers all items containing CBI that were produced pursuant to the Protective Order. Thus, Patent Owner's litigation counsel (Pepper Hamilton) cannot agree to retain copies of the expunged materials that were produced and designated as CBI under the Protective Order by any party other than Patent Owner itself.

### V. RELIEF REQUESTED

Patent Owner requests that all materials that remain designated as CBI under the 726 Investigation Protective Order (*i.e.* all documents that are not highlighted in green in the attached Exhibit B) be permanently expunged from the Patent Office Records.

Patent Owner further reiterates its prior requests that the current "freeze" on public access to non-patent literature (which includes all of the documents identified as CBI under the 726

Investigation Protective Order that were inadvertently included in the original IDS) associated with the above-identified cases be maintained in the above-identified matter until the Petitions to Replace are fully decided.

Patent Owner proposes that the most efficient way to expunge all CBI from the PTO's records is the following two step process:

- a) Patent Office expunges all of the references in the previously identified IDSs (see recently filed petition under §1.182) which contain any materials that were originally designated as CBI under the 726 Investigation Protective Order, and
- b) Patent Owner provides replacement IDSs that exclude all materials that remain designated as CBI under the 726 Investigation Protective Order, while including all other materials originally filed with the IDS.

Alternatively, Patent Owner will assist in any process that the Patent Office determines is appropriate for expunging the CBI from the IDS and records.

VI. CONCLUSION

The Office is invited to direct any questions or comments regarding this matter to the undersigned at the below-listed telephone number, facsimile number, or e-mail address.

The Commissioner is hereby authorized to charge any fees that may be required, or credit any overpayment, to Deposit Account No. 50-1732.

Although service is not believed to be required since the Reexamination Proceeding has already been concluded, service is nevertheless being made as a courtesy to the third-party Requester. Evidence of service of this Petition is attached hereto as the last page.

An early and favorable action is hereby requested.

Respectfully submitted,

/Ed Garcia-Otero/

Ed Garcia-Otero  
Reg. No. 56,609

October 18, 2012

Withrow & Terranova, PLLC  
100 Regency Forest Drive  
Suite 160  
Cary, North Carolina 27518  
TEL: (919) 238-2300  
FAX: (919) 238-2301  
E-MAIL: [patents@wt-ip.com](mailto:patents@wt-ip.com)

Exhibit A: Mail from General Counsel dated October 4, 2012.

Exhibit B: List of all original CBI, with de-designated CBI highlighted.